

BOARD OF APPEALS
for
MONTGOMERY COUNTY
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Case No. S-2575

PETITION OF DAVID AND TRISHA CREEKMORE

OPINION OF THE BOARD

(Public Hearing Date: July 9, 2003)

(Effective Date of Opinion: September 11, 2003)

Case No. S-2575 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment.

The Board of Appeals held a hearing on the application on July 9, 2003. David and Trisha Creekmore appeared in support of the application. Robert Dejter, Housing Code Field Supervisor, Department of Housing and Community Affairs (DHCA) also testified.

The Board received a letter of opposition signed by Dr. Pamela A. Megna, and Dr. Mark S. Klock who live at 317 Lincoln Avenue and Mrs. Kristin Westbrook who lives at 319 Lincoln Avenue.

Decision of the Board: Special Exception **granted** subject
to conditions enumerated below.

EVIDENCE PRESENTED

1. David and Trisha Creekmore request a special exception to permit an existing accessory apartment. The subject property is Lot 55, Block 37, B.F. Gilberts Subdivision, located at 302 Lincoln Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone, and is located in the Takoma Park Historic District.
2. Robert Dejter inspected the accessory apartment and submitted a report into the record. Mr. Dejter observed no Code deficiencies and found that based upon its 310 square feet of habitable space, the accessory apartment is suitable for occupancy by not more than two unrelated persons or a family of not more

than two persons. [Exhibit No.13]. At the public hearing, Mr. Dejter stated that there are three off-street parking spaces on the subject property, and that in the neighborhood defined by Carroll Avenue, Boyd Avenue, Jackson Avenue and Sligo Creek Park, there are two other approved accessory apartments.

3. Maryland National Capital Park and Planning Commission (MNCPPC) staff reviewed the application and recommend approval. Staff finds that the application is consistent with the Takoma Park Master Plan (2000). Staff notes that the plan emphasizes accepting the diverse housing types typical in Takoma Park, that accessory apartments are a good source of affordable housing, and that the plan supports the R-60 zoning for the subject property, which allows accessory apartments by special exception.

Staff finds that the application meets all development standards for the R-60 Zone, and all of the general and specific standards for accessory apartments. Staff finds that since the entrance to the accessory apartment is located at the rear of the house, underneath the back deck and not visible from the street, the single-family appearance of the house is preserved. Staff finds that the accessory apartment is subordinate to the main house, and with approximately 696 square feet, well below the maximum limit of 1200 square feet. Staff finds that, with three off-street parking spaces available, parking is sufficient, and recommends as a condition of approval that one of the three spaces be dedicated to parking by occupants of the accessory apartment.

In a 45-acre neighborhood defined by Sligo Creek Park to the northwest, the rear lot lines of properties on the northwest side of Carroll Avenue between Sligo Park and Sherman Avenue, the rear lot lines of properties on the east side of Carroll Avenue between Sherman Avenue and Boyd Avenue, the rear lot lines of properties along the south side of Boyd Avenue from Carroll Avenue to Jackson Avenue, and the rear lot lines of the properties along the east side of Jackson Avenue from Boyd Avenue to Sligo Park, staff identified five existing special exceptions for accessory apartments and one for a nursing and care home. Staff found that the addition of this accessory apartment would not result in an excessive concentration of similar uses. Staff based this finding on several factors: 1) Takoma Park has always encompassed and anticipated a wide variety of housing types; 2) on-site parking is sufficient; 3) no exterior modifications are proposed and the single-family appearance of the home is preserved. Staff also notes that the MNCPPC Community-Based Planners and the Takoma Park City Planner felt that the accessory apartment would not adversely affect neighborhood character, and the the Takoma Park City Council, aware of the application, had no comments about it.

4. Mr. Creekmore stated that there are three large trees in the back yard, about 20 feet from the entrance to the accessory apartment. He stated that on the exterior of the house there are three, 60 watt halogen lights activated by sensors. He further stated that the shed on the property and the sheds on

neighbors' properties screen neighbors' view of the entrance. Mr. Creekmore submitted a copy of his deed for the subject property [Exhibit No.16], and stated that he will receive compensation for only one dwelling unit.

5. The house was built in 1998, and the Creekmores have owned it since June, 2002. [Exhibit Nos. 3 and 16].

6. The square footage of the lot is 7382 feet and the square footage of the accessory apartment is 656 square feet. [Exhibit No. 3].

7. No exterior modifications are proposed. The apartment is located in the basement of the house, and consists of a living room, kitchen, bathroom and bedroom. It has the same address as the house, and has a separate entrance at the rear of the house which is not visible from the street. [Exhibit Nos. 3, 8 and 5a].

8. The house is served by adequate public facilities. [Exhibit Nos. 3 and 12].

9. A letter of opposition from Pamela A. Megna, Paul S. Klock and Kristin Westbrook expresses concern that there is an overconcentration of similarly used residences in the neighborhood, because of the presence of apartments in other houses on Lincoln and Carroll Avenues. In addition, opponents feel that the apartment should be denied because of the excess demand for parking on Lincoln Avenue.

FINDINGS OF THE BOARD

GENERAL STANDARDS

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household.

The accessory apartment in the instant application is subordinate to the main dwelling, has an entrance which maintains the single family appearance of the house, and has three off-street parking spaces.

The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected with the use. The Board finds that there will be no non-inherent adverse effects from this proposed accessory apartment.

59-G-1.21. General Conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Accessory apartments are permitted by special exception in the R-60 Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed more fully below, the Board finds that the application complies with all required standards.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a*

particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board adopts MNCPPC staff's finding that the accessory apartment will be consistent with the Takoma Park Master Plan, which emphasizes accepting the diversity of housing types in Takoma Park. The Board concurs that accessory apartments can be a mechanism to provide affordable housing, and notes that the Master Plan supports the R-60 zoning for the subject property, where accessory apartments are allowed by special exception.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

No new structures are proposed. The single family residential appearance of the house is preserved. Three off-street parking spaces are available. The Board will impose a condition of approval that one of these spaces be dedicated to parking for tenants of the apartment. The Board finds that in its appearance and impacts, the apartment will be in harmony with the general character of the neighborhood. The Board takes cognizance of the concerns of opponents about the presence of other apartments in the neighborhood and the constraints of on-street parking, but finds that the traffic impact of the apartment is mitigated by the availability of on-site parking. Further, the letter of opposition appears to refer to apartments which are not special exception uses.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the accessory apartment will have no visual detrimental impact on the character of the neighborhood, and that its principal potential operational impact, parking, will be mitigated by the presence of the required number of on-site parking spaces.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the exterior lighting on the house is residential in nature and appropriate for residential purposes. The Board accepts Mr.

Creekmore's testimony that the entrance to the accessory apartment is partially screened from view of neighbors by the presence their sheds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The Board adopts MNCPPC staff's finding that the requested accessory apartment will not alter the predominantly residential character of the neighborhood. The Board takes cognizance of the concerns of opponents about the presence of other apartments in the neighborhood and the constraints of on-street parking, but finds that the traffic impact of the apartment is mitigated by the availability of on-site parking. Further, the letter of opposition appears to refer to apartments which are not special exception uses

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

No activity or physical characteristic of the requested accessory apartment will have any of the listed adverse effects.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The subject property is served by adequate public facilities.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board adopts MNCPPC staff's finding that there will be no adverse impact to pedestrian or vehicular safety.

SPECIFIC STANDARDS

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Only one accessory apartment is requested.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

The accessory apartment is located in the basement of the house and therefore shares more than one party wall in common with the main dwelling.

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

No addition or extension is proposed.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

The house was built in 1998, and is therefore five years old.

(5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

None of the listed conditions exists on the subject property.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

The entrance to the accessory apartment is located at the rear of the house, below the back deck, and hence is not visible from the street. The Board finds that this preserves the single-family appearance of the house.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

No external modifications are proposed.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

The accessory apartment has the same address as the main house.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

The accessory apartment occupies a portion of the basement of the house and is therefore subordinate to the main dwelling, and with an area of 310 square feet of habitable space, well below the maximum allowable 1200 square feet.

(b) Ownership requirements:

(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

The Creekmores live in the main part of the house.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

The accessory apartment existed at the time the applicants purchased the house on June 21, 2002.

- (3) *Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

The applicants understand that they can receive compensation for only one dwelling unit.

- (4) *For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.*

As evidenced by the deed submitted as Exhibit 16, the applicants are the owners of the subject property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Not applicable.

(c) Land use requirements:

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

The lot size is 7,382 square feet. The application meets all of the other development standards for the zone.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).*

The Board finds that the addition of this accessory apartment will not result in an excessive concentration of similar uses. The Board is aware of the concerns of opponents to the application but notes that some of the other apartments to which they refer appear not to be special exceptions. In addition, the Board is persuaded by the opinions of the MNCPPC and Takoma Park planners who find the apartment in harmony with the neighborhood given the availability of on-site parking and preservation of the single-family appearance of the house.

- (3) *There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.*

The property is served by adequate public facilities.

- (4) *Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:*

- (i) *More spaces are required to supplement on-street parking; or*
- (ii) *Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.

Three off-street spaces are available.

- (5) *Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.*

The Board finds that the accessory apartment will have no visual detrimental impact on the character of the neighborhood, and that its principal potential operational impact, parking, will be mitigated by the presence of the required number of on-site parking spaces.

Therefore, based upon the foregoing, the Board **grants** the special exception, subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record, including, but not limited to Exhibits 3, 4, 5 6 and 8, to the extent that such evidence and representations are identified in the opinion of the Board.

2. One of the on-site parking spaces shall be dedicated to parking for residents of the accessory apartment.

3. Pursuant to the provisions of the Montgomery County Housing Code and based upon its habitable area of 310 square feet, the apartment is suitable for occupancy by no more than two individuals.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 11th day of September, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.